

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1080 OF 2015

(Rupesh s/o.Pandurang Kinbikar .vs. State, through its Secretary, Deptt. Of Education,
Mantralaya, Mumbai and Ors.)

with

WRIT PETITION NO.1081 OF 2015

(Ramhari s/o. Pundlikrao Pandit .vs. State, through its Secretary, Deptt. Of Education,
Mantralaya, Mumbai and Ors.)

with

WRIT PETITION NO.1082 OF 2015

(Jagannath s/o. Namdeorao Rane .vs. State, through its Secretary, Deptt. Of Education,
Mantralaya, Mumbai and Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.S.G.Joshi, Adv. for the petitioners.
Ms Tajwar Khan, A.G.P. and Mr.N.R.Rode, A.G.P. for
respondent no.1.
Mr.Amol Deshpande, Adv. for respondent nos. 2 and
3.

**CORAM : B.P.DHARMADHIKARI &
S.B.SHUKRE, JJ.**

DATE : 6.4.2015.

Heard.

Mr.S.G.Joshi, learned Counsel for the petitioners points out that the petitioners continue in employment because of protection granted by this Court on 2.3.2015 while issuing notices in the matters. He submits that all the petitioners have joined employment as Scheduled Tribe candidates before delivery of Judgment in the case of **State of Maharashtra .vs. Milind Katware and Others** reported in (2001)1 SCC

4. As such, in the light of Judgment of Full Bench of this Court in the case of Arun s/o Vishwanath Sonone vs. State of Maharashtra, through its Secretary, Department of Education, Mantralaya, Mumbai-32 and Ors. reported in 2015 (1) Mh.L.J. 457, the petitioners are entitled to grant of protection of employment. Inviting our attention to the present facts, the learned Counsel for the petitioners submits that the employer had called upon the petitioners to submit S.B.C. validity. The petitioners accordingly procured it as per law and then submitted it. Having accepted that validity, the employer cannot now turn around and terminate services of the petitioners on the ground that they were recruited against Scheduled Tribe vacancy.

The learned A.G.P. as also Mr. Amol Deshpande, learned Counsel for respondent nos. 2 and 3 oppose the petition. They invite our attention to the observations of Full Bench in the case of Arun Vishwanath Sonone (supra) to urge that unless and until caste claim as belonging to Scheduled Tribe is verified, protection cannot be granted.

We find that the Hon'ble Full Bench has found incumbent entitled to protection if he is not guilty of any falsehood or fraud while procuring basic document i.e. caste certificate as belonging to Scheduled Tribe. If there is a positive finding in this respect, such protection cannot be given. Such a finding is possible only when caste claim is verified for

that purpose.

In this situation, our attention is invited by Mr.S.G.Joshi, learned Counsel to the Judgment dt.26.3.2015 in Writ Petition No.4226 of 2014 and the Judgment dt.12.2.2015 in Writ Petition No.3729 of 2014 and connected matters. However, the learned Counsel submits that the question of relevance of finding of falsehood or fraud was not required to be gone into in those Judgments.

As explained by the Hon'ble Full Bench in the recent Judgment in the case of Arun Vishwanath Sonone (supra), protection can be extended only after having a finding of absence of falsehood or fraud.

Mr.S.G.Joshi, learned Counsel states that the petitioners have already submitted necessary documents. Those documents can be again submitted and claim of the petitioners can be looked into by the competent Scheduled Tribe Caste Certificate Verification Committee in accordance with law, but employment of the petitioners cannot be terminated. Mr.Amol Deshpande, learned Counsel as also learned A.G.P. are opposing this contention.

However, we find that unless and until there is a finding that the petitioners have indulged in falsehood or played some fraud, their services cannot be terminated. The petitioners had on one occasion submitted necessary documents and as such, they cannot be blamed for not obtaining validity. In this

situation, we direct the petitioners to submit necessary documents for verification of their tribe status in accordance with law within a period of four weeks from today. If such documents are submitted, the employer shall forward the same to the competent Tribe Claim Scrutiny Committee within a further period of four weeks. The concerned Scrutiny Committee shall attempt to complete verification in accordance with law as per the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Act No.XXIII of 2001) within a period of next one year.

The interim order passed by this Court shall continue till then and shall be subject to it.

Entitlement of the petitioners to claim protection in employment is kept open and shall be gone into thereafter if any occasion therefor arises.

The Writ Petitions are, thus, partly allowed and disposed of.

JUDGE

JUDGE